

Marshall made America think differently of race

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Thurgood Marshall used simple brilliance, raw courage and rasping humor to force America to think and act differently about race.

A son of Baltimore who never stopped resenting the city's racist past revolutionized the law by using a Constitution that he believed had been born out of racial bigotry.

Justice Marshall found enough promise and flexibility within the Constitution to turn it into an instrument of sweeping reform that destroyed Jim Crowism in the United States.

In his later years, Marshall, the Supreme Court's first black

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justice, was saddened by the passing of liberalism, both from the court and from U.S. public policy, Justice Marshall died yesterday at age 84.

His last disappointment had come just last week, when he was not well enough to fulfill a promise to give the oath of office to Vice President Al Gore.

But Justice Marshall had already passed into history on the strength of a whole nation's remembrance that it was he, sometimes almost alone, who had broken down most of his country's

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color barriers.

He was as much a man of the past as of the future in recent years, unable to adjust to the fads of political correctness and constitutional compromise.

He never quite understood why he, of all people, would have been thought of as being wrong when he continued to refer to black people as "Negroes," even after it became politically obligatory to refer to them as "African-Americans."

Given to back-slapping, barracks room jokes and unrelieved stubbornness about his own views, Justice Marshall was never successful at "massing" the court to follow his lead.

He left the manipulating of votes to be done by the more politically

adept Justice William J. Brennan Jr. Without even discussing it, the two of them knew that Justice Marshall would almost always vote with Justice Brennan, and vice versa.

In his last day on the bench, he sat silently as a conservative-dominated court announced that it now felt free to abandon many of the liberal precedents of the past, many of which Marshall brought about or strongly supported. But as he sat there, he knew that within the hour, the court would release to the public his scathing dissent railing against the new majority and warning the nation that it was risking constitutional error of a kind that he thought most grave.

Well aware personally that many of his public auditors believed that his contribution to the United States and even to race relations probably

had ended before he ever joined the Supreme Court, Justice Marshall was content to let his judicial record speak for itself as he did his uncommonly creative record as a lawyer — the part of his career that was universally accepted as historic, special and astonishingly successful.

With historic irony, Justice Marshall died on the very day that Washington's main newspaper, the *Post*, lionized him with a review of three new books about his life. Typically, none of those books was an authorized biography; Thurgood Marshall was uncomfortable having someone else describe Thurgood Marshall.

His most symbolic victory in life, to many, was handling one of the first five Supreme Court cases that ended racial segregation in the nation's public schools — at least as a

matter of constitutional necessity if not immediate social reality.

But to Justice Marshall that victory was not mere symbolism. It was a driven need commanded by history.

For symbolism, nothing he had done could match his becoming the first black Supreme Court justice. He was sent to the bench by President Lyndon B. Johnson in 1967, leading to a 24-year career of undiluted liberalism in the law, especially the law that governs how minorities are treated.

But race equality was not his only passion as a justice. He believed, and made it known he believed with all his heart, that the nation risked social and moral barbarism by maintaining the death penalty. Along with Justice Brennan, Justice Marshall insisted routinely that no one ever should be executed, no matter

what their crime.

Behind the august facade of the Supreme Court, his passion ran from salty stories to occasional buffoonery, to warm humanity.

But curiously he spent his public years and his last year of life still nurturing ill feelings toward his home city of Baltimore. He was angry at the way his father, a railroad dining car employee, had suffered from blatant racism.

He seldom would visit the city himself and occasionally had Justice Brennan stand in for him when the city wanted to honor Justice Marshall. In private conversation, he let his anger, over what he believed to be pervasive racism not only in Baltimore but well beyond it, roll like the

heaviest of thunder.

And in public commentary he refused to join in the nation's self-congratulatory celebration of the Constitution's 200th birthday because he felt the nation's most fundamental document had been birthed in colonial racism.

In recent years, new brethren joined him on the court, bringing with them an argument that the Constitution should be interpreted as it would have been in 1787. Justice Marshall unstintingly objected.

He began his judicial career only after he had done what he could — and that was an enormous amount — to revolutionize those beliefs.